



# Planning (Hazardous Substances) Act 1990

## 1990 CHAPTER 10

### *Contraventions of hazardous substances control*

#### **23 Offences.**

- (1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control—
  - (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
    - (i) there is no hazardous substances consent for the presence of the substance; or
    - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
  - (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In subsection (1) “the appropriate person” means—
  - (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
    - (i) any person knowingly causing the substance to be present on, over or under the land;
    - (ii) any person allowing it to be so present; and
  - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the person in control of the land.
- (4) A person guilty of an offence under this section shall be liable [<sup>F1</sup>on summary conviction, or on conviction on indictment, to a fine].

[<sup>F2</sup>(4A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial

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benefit which has accrued or appears likely to accrue to him in consequence of the offence]

- (5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or
  - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
    - (i) that the substance was present; or
    - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
  - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

#### Textual Amendments

- F1** Words in s. 23(4) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 20** (with reg. 5(1))
- F2** S. 23(4A) substituted (2.1.1992) for the words following s. 23(4)(b) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, **Sch. 3 Pt. 1 para. 10(b)** (with s. 84(5)); S.I. 1991/2905, **art. 3**

#### Modifications etc. (not altering text)

- C1** S. 23 restricted and modified by [S.I. 1992/725](#), **art. 4**
- C2** S. 23: power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), **art. 3**
- C3** S. 23 restricted (E.) (28.4.2010) by [The Planning \(Hazardous Substances\) \(Amendment\) \(England\) Regulations 2010 \(S.I. 2010/1050\)](#), regs. 1(1), **3**

#### Commencement Information

- II** S. 23 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 23 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## 24 Power to issue hazardous substances contravention notice.

- (1) Where it appears to the hazardous substances authority that there is or has been a contravention of hazardous substances control, they may issue a notice—
- (a) specifying an alleged contravention of hazardous substances control; and
  - (b) requiring such steps as may be specified in the notice to be taken to remedy [<sup>F3</sup>wholly or partly] the contravention,
- if they consider it expedient to do so having regard to any material consideration.

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- (2) Such a notice is referred to in this Act as a “hazardous substances contravention notice”.
- (3) A hazardous substances authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (4) A copy of a hazardous substances contravention notice shall be served—
  - (a) on the owner of the land to which it relates;
  - (b) on any person other than the owner who appears to the hazardous substances authority to be in control of the land; and
  - (c) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
  - (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
  - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where a hazardous substances authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (1)(b), if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substances which are required to be removed.
- (8) The hazardous substances authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before <sup>F4</sup>or after] it takes effect.
- (9) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice <sup>F5</sup>or would, if the notice were re-issued, be served with a copy of it].

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#### Textual Amendments

- F3** Words in s. 24(1)(b) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 11\(a\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)
- F4** Words in s. 24(8) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 11\(b\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)
- F5** Words in s. 24(9) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 11\(c\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

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#### Modifications etc. (not altering text)

- C4** [S. 24](#) Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art.3](#)

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#### Commencement Information

- I2** S. 24 wholly in force at 1.6.1992 and in force at 11.3.1992 for certain purposes see S.I. 1992/725, art. 2, 3

#### [<sup>F6</sup>24A Variation of hazardous substances contravention notices.

- (1) A hazardous substances authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 24(5)(b) in the notice.
- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The hazardous substances authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.]

#### Textual Amendments

- F6** S. 24A inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para.12** (with s. 84(5)); S.I. 1991/2905, **art. 3**

#### Modifications etc. (not altering text)

- C5** S. 24A: power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art. 3**

#### Commencement Information

- I3** S. 24A wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 24A in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### 25 Hazardous substances contravention notices: supplementary provisions.

- (1) The Secretary of State may by regulations—
  - (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by section 24;
  - (b) provide—
    - (i) for appeals to him against hazardous substances contravention notices;
    - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
    - (iii) for the procedure to be followed on such appeals;
    - (iv) for the directions that may be given on such an appeal;
    - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 174, [<sup>F7</sup>175(1) to (3)] and (6), 176, 177, 285 and 289 of the principal Act;
  - (c) direct that any of the provisions of sections 178 [<sup>F8</sup>(1) to (5) and (7)], 179 to 181, 183, 184, [<sup>F9</sup>186,] 187 and 188 of [<sup>F10</sup>the principal Act] shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;

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- (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (2) If any person appeals against a hazardous substances contravention notice, the notice shall <sup>[F11]</sup>subject to regulations under this section]be of no effect pending the final determination or the withdrawal of the appeal.
- (3) Regulations under section 24 or this section may make different provision for different cases or descriptions of cases.
- (4) Where any person has appealed to the Secretary of State under this section against a hazardous substances contravention notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- <sup>[F12]</sup>(5) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings <sup>[F13]</sup>in England] before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250.]

#### Textual Amendments

- F7** Words in s. 25(1)(b)(v) (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. II para. 30(a)** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F8** Words in s. 25(1)(c) repealed (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. II para. 30(b)**, **Sch. 19 Pt. I** (with s. 84(5)); S.I. 1991/2905, **art. 3**, **Sch. 2**
- F9** Word "186," inserted (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 8**; S.I. 1991/2829, **art. 3**
- F10** Words in s. 25(1)(c) substituted (11.11.2014) by The Town and Country Planning (Determination of Procedure) (Wales) Order 2014 (S.I. 2014/2773), **art. 1(2)**, **Sch. 1 para. 27(b)**
- F11** Words in s. 25(2) inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 13** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F12** S. 25(5) inserted (temp.) by virtue of Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 6, **Sch. 4 paras. 1, 13** (which temp. insertion falls (2.1.1992) for specified purposes only by virtue of S.I. 1991/2698, **arts. 3, 4**)
- F13** Words in s. 25(5) inserted (6.9.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Planning (Wales) Act 2015 (anaw 4), s. 58(2)(b)(4)(b), **Sch. 5 para. 24**; S.I. 2016/52, **art. 4(i)** (with **art. 17**)

#### Modifications etc. (not altering text)

- C6** S. 25 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art. 3**
- C7** S. 25 modified (E.) (1.6.2015) by The Planning (Hazardous Substances) Regulations 2015 (S.I. 2015/627), **regs. 1(1), 19(2)** (with **reg. 34**)
- C8** S. 25(2) restricted (1.6.1992) by S.I. 1992/656, **reg. 22(2)**
- C9** S. 25(2) modified (W.) (4.9.2015) by The Planning (Hazardous Substances) (Wales) Regulations 2015 (S.I. 2015/1597), **regs. 1(1), 20(2)** (with **reg. 36**)
- C10** S. 25(5): transitory modification by 1990 c. 11, **Sch. 4 para. 13** falls (6.4.2009) for further specified purposes by virtue of S.I. 2009/849, **art. 2** (with **art. 3**)

#### Commencement Information

- I4** S. 25 wholly in force at 1.6.1992 see S.I. 1992/725, **art. 3**; s. 25 in force for certain purposes at 11.3.1992 see S.I. 1992/725, **art. 2**

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**F14 26 Transitional exemptions.**

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**Textual Amendments**

**F14** S. 26 repealed (21.7.2008) by Statute Law (Repeals) Act 2008 (c. 12), **Sch. 1 Pt. 9**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(4A) inserted by [2023 c. 55 Sch. 17 para. 4\(b\)](#)
- s. 9(2)(ca) inserted by [2023 c. 55 Sch. 6 para. 14](#)
- s. 10(4) inserted by [2023 c. 55 s. 124\(6\)](#)
- s. 20(4A) inserted by [2008 c. 29 Sch. 10 para. 26](#)
- s. 21(5A) inserted by [2008 c. 29 Sch. 10 para. 27](#)
- s. 37(3) inserted by [2008 c. 29 Sch. 10 para. 29](#)
- s. 37(5) inserted by [2023 c. 55 s. 124\(7\)\(b\)](#)
- Sch. para. 2(4A) inserted by [2008 c. 29 Sch. 10 para. 30\(2\)](#)
- Sch. para. 2(9) inserted by [2008 c. 29 Sch. 10 para. 30\(3\)](#)
- Sch. para. 3(4A)(4B) inserted by [2008 c. 29 Sch. 10 para. 30\(4\)](#)
- Sch. para. 6(1A) inserted by [2008 c. 29 Sch. 10 para. 30\(6\)](#)